Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 690 (S/B) of 2002

Bishnu Datt Kandpal
S/o Sri Khima Nand Kandpal,
R/o Mohalla Jhijhar,
Almora ..... Petitioner

Versus

1. Secretary, Cooperative Department,
   Uttaranchal Shasan, Dehradun,

2. Registrar, Cooperative Societies,
   Uttaranchal, Almora,

3. Sri Bhagwan Singh Negi,
   Presently posted as Head Clerk/
   Senior Assistant in the Office of
   Registrar Cooperative societies Uttaranchal
   Attached in the Camp Office of additional
   Registrar, Cooperative societies Dehradun.

4. Smt. Rajeshwari Arya, presently posted as
   Head Clerk/Senior Assistant in the Officer of
   Registrar Cooperative Societies, Uttaranchal,
   Almora. ..... Respondents

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Hon. P.C.Verma, J.

Petitioner has filed the present petition seeking a writ in the nature of mandamus commanding the respondent no.2 to promote him to the post of Head Clerk/Senior Assistant w.e.f. 1.7.2000 in accordance with his seniority. He also prayed for a writ of mandamus directing respondent no.2 to give all consequential benefits of promotion to the petitioenr including difference of salary, seniority, etc.

2. Brief facts giving rise to the present petition are that the petitioner was initially appointed as Junior Clerk

in the Cooperative Department w.e.f. 17.01.1966. He was promoted to the post of Senior Clerk w.e.f. 1.5.1978. Since then, the petitioner is continuing on the post of Senior Clerk in the Cooperative Department. With effect form 22.06.1989 the petitioner is posted in the office of the Additional Registrar, Cooperative societies, Almora, which has been upgraded after reorganization of the State as the Office of the Registrar, Cooperative Societies, Uttaranchal w.e.f. 9.11.2000.

3. According to the learned counsel for the petitioenr, in both the seniority list i.e. as per final seniority list in respect of ministerial employees serving in the Cooperative Department circulated by the Registrar, Cooperative Societies, U.P. vide letter dated 29.03.1996, and the subsequent seniority list (Annexure 3), the name of the petitioenr is above the respondent nos. 3 and 4. the petitioenr and respondent no. 4 opted for Hill sub cadre in pursuance to the U.P. Hill Sub Cadre Rules, 1992. However, the respondent no.3 Sri Bhagwan Singh Negi did not opt for Hill Sub cadre. Therefore, he continued in the General (plain) cadre.

4. Learned counsel for the petitioenr further contends that, respondent no. 3 Bhagwan Singh Negi is seven years junior to the petitioner. Respondent no.3 was appointed on 10.5.1973 whereas the petitioenr was appointed on 17.1.1966. Respondent no. 4 was appointed w.e.f. 1.2.1977. Pursuant to the option for U.P. Hill sub cadre, petitioenr and respondent no.4 opted for Hill sub cadre, while Bhagwan Singh Negi opted for general cadre. The post of junior clerk/routine clerk is to be filled by recruitment and all other superior posts in the ministerial

establishment are to be filled by promotion alone on the criterion of seniority cum fitness. In the year 1999, Sri Bhagwan Singh Negi who was serving as Senior clerk at Pauri was transferred on promotion to the post of Head Clerk in the office of Registrar, Cooperative Societies, Lucknow. However, the petitioner was denied promotion on the ground that there was no vacancy existing on the post of Head Clerk on the post born in Hill sub cadre.

5. Prior to the appointed date, both the post of Head Clerk in Hill sub cadre had fallen vacant , one with effect form 1.7.2000 and the other with effect from 1.9.2000 and thus the petitioner being senior most person serving in the cadre was entitled to be considered and promoted against any of the said posts. After reorganization Sri Bhagwan Singh Negi was relieved from U.P. and he joined as Head Clerk in the Camp office of respondent no.2 on 20.3.2001 and since then he is serving as Head Clerk in Uttaranchal.

6. It is again submitted that Smt. Rajeshwari Arya was given promotion under reservation quota as she belongs to scheduled caste. According to the petitioenr promotion quota is 19% for scheduled caste. Out of two posts if one goes to scheduled caste category, fundamental right of equality of opportunity of the general category candidates would be violated as excessive reservation is not permissible under any circumstances as held by the Apex Court. In any case Bhagwan Singh Negi cannot retain the benefit of promotion, which he availed as member of general cadre as seniors to him are still continuing on the lower post in Uttaranchal. Thus, petitioenr claimed promotion being senior to respondent nos. 3.

It is submitted by the learned counsel for the petitioner that the promotion of the respondent no.3 on the post of Head Clerk is illegal inasmuch as the petitioner is senior to respondent no.3 and ought to have been promoted.

7. Respondent nos. 3 and 4 were served, but they did not contest the case. The service on them is treated sufficient.

8. Learned counsel for the State appearing on behalf of respondent nos. 1 and 2 argued after the Reorganisation of the state of Uttaranchal combined seniority list in respect of ministerial employees circulated by Registrar, Cooperative Societies, U.P. dated 29.3.1996 is not relevant. It is submitted that as per procedure for promotion vide government order dated 1455/Karmik-2/200/Karmik Anubhag-2 dated 31.08.2001, first post on promotion has to go to scheduled caste candidate. Therefore, respondent no.4 was promoted.

It is also submitted that Sri Bhagwan Singh Negi was promoted as per order dated 8.12.1999 passed by the Deputy Registrar (Administration). Cooperative Societies U.P., Lucknow on the post of Senior Assistant in the pay scale of Rs. 4500-7000/- as per seniority in general cadre. It is also submitted that the petitioenr was denied his promotion as he was in Hill cadre. It was not possible to promote the petitioner at the time of promotion of respondent no.3 as there was no post available in the Hill sub-cadre. Sri Negi was promoted under the orders of Deputy Registrar (Administration), Cooperative Societies, U.P. Lucknow after putting in continuous satisfactory

service of eight years in the post of Head Clerk in the plain cadre. It is also submitted that after Reorganisation of the State of Uttaranchal, the Divisional Office of Deputy Registrar, Societies, Nainital and Pauri were abolished and the posts of Senior Assistant in the Pay scale of Rs. 4500-7000/- were sanctioned for each division and were adjusted after reorganization of the department of Registrar Cooperative Societies.

9. It is further submitted by the learned counsel for the State that Sri Bhagwan Singh Negi, respondent no.3, who was working in the post of Senior Assistant in the pay scale of Rs. 4500-7000/- after reorganization of the State of Uttaranchal, opted for the state of Uttaranchal. The Registrar Cooperative Societies, U.P., Lucknow accepted the option given by Shri Negi and relieved him for the State of Uttaranchal. Shri Negi joined his duties in the camp office of respondent no.2 at Dehradun on 20.03.2001. At that time both the post of the Senior Assistants were vacant and the petitioenr was working in the post of Head Clerk in the scale of Rs. 4000-6000. Therefore, it is submitted that Shri Negi is senior to the petitioner.

10. It is again submitted that there are tow posts of Senior Assistants in the state of Uttaranchal. On post was filled by the transfer/option of the respondent no.3 and the other was filled according to roster and the Government order by respondent no.4, therefore, the petitioner's claim can be considered whenever any post falls vacant. It is lastly submitted that the petitioner has alternative remedy to raise his seniority and promotion dispute before Uttaranchal Public Service Tribunal and the petition is liable to be dismissed with costs.

11. Admittedly, the services of the ministerial employees of the Cooperative Department are regulated by the U.P. Cooperative Department Ministerial Service Rules 1977. Rule 5 of the U.P. aforesaid Rules deals with source of recruitment to the various categories of posts in service. As per the Rules, in the hierarchy of ministerial cadres, the post of Junior Clerk finds place in the bottom whereas the post of Head Assistant is at the top. Junior Clerk is the feeder post for promotion as Senior Clerk and Senior Clerk is the feeder post for promotion as notor and Drafters and Head Clerks of Subordinate offices. Noter, Drafter and Head Clerk of Subordinate officers is the feeder post for promotion as Head Clerk in Head Office. The highest post in the service. Namely, Head Assistant is to be filled by promotion form amongst Head Clerks of Head Office.

12. Rule 16 lays down the procedure for recruitment by promotion and provides that promotion shall be made on the basis of seniority subject to rejection of unfit. Rule 16(2) provides that an eligibility list shall be prepared by appointing authority in order of seniority which shall be forwarded to the Selection Committee and Rule 16(4) provides that the Selection Committee shall prepare a list of selected candidates arranged in order of seniority and forward the same to the Appointing Authority. Rule 20 of the aforesaid rules provide that the seniority of the persons form the date of substantive appointment and if two or more candidates are appointed on the same date, according to the order in which their name are arranged in the appointment order. The said rule is parimeteria to the provisions of U.P. Government servant Seniority Rules, 1991.

Rule 20 of the U.P .Cooperative Department Ministerial Service Rules 1977 is quoted below:

> " **Seniority**-(1) A separate gradation list shall be maintained for each category of posts in the service.
>
> (2) seniority of persons in any category of posts shall be determined from the date of substantive appointment and if two or more candidates are appointed on the same date, according to the order in which their names are arranged in the appointment order:
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> Provided that-
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> (i) The inter se seniority of the persons directly appointed shall be the same as determined at the time of selection.
> (ii) The inter se seniority of persons appointed by promotion shall be the same at as it was in the substantive post held by them at the time of promotion.

13. A perusal of the Rule 20 quoted above makes it clear that the seniority in any category of post was to be determined from the date of substantive appointment.

14. From the facts narrated above, it is quite clear that petitioenr is senior to both respondent no. 3 and 4 being at serial no. 48 in the final seniority list dated 29.3.1996 circulated by the Registrar, Cooperative Societies, Lucknow, in which the respondent no. 3 is placed at serial no. 118. In the said list the name of respondent no.4 does not find place. In the subsequent seniority list for Hill sub-cadre, the name of the petitioenr is at serial no. 5, whereas the name of respondent no.4 is at serial no. 12. In the said list, the name of respondent no.3 is not mentioned as he continued to remain in plain cadre. Therefore, the petitioner is senior to Sri Bhagwan Singh

Negi and Smt. Rajeswari Arya (respondent nos. 3 and 4) and cannot be deprived of promotion on the ground that respondent no3, who was promoted by the orders of Deputy Registrar (Administration), Lucknow joined in the Start of Uttaranchal after creation of the new State; and pursuant to roster system the respondent no. 4 was promoted according to roster system.

15. In view of the above facts, the petitioner is senior to respondent nos. 3 and 4 and he is entitled to be promoted prior to their promotion. Therefore, I am of the view that the petitioner is entitled for promotion w.e.f. 1.7.2000, when the post fell vacant in Hill sub-cadre.

16. Accordingly, writ petition is allowed. The respondent no. 2 is directed to promote the petitioner to the post of Head Assistant in the Head Office w.e.f. 1.7.2000 if there is no adverse material on his service. As a consequence thereof, the respondent no.3 shall be reverted and if the Government wants to retain the respondent no.3 on the post of Head Assistant, then it is open for the Government to create a superannuary post for him.

17. In the circumstances of the case, there will be no order as to costs.

September 20, 2004. **(P.C.Verma, J.)**